DISSENTING VIEWS – H.R. 4761

We strongly oppose H.R. 4761, radical legislation which would jettison more than 25-years of laws and policies regarding management of national Outer Continental Shelf (OCS) lands and resources. H.R. 4761 is unnecessary, environmentally damaging, and fiscally irresponsible legislation which should be rejected by the House.

A preliminary estimate by the Administration's Minerals Management Service (MMS) concluded that H.R. 4761 would add $69 billion to the federal budget deficit over the first 15 years. [See: attached MMS letter dated June 21, 2006] And according to the prime sponsor of H.R. 4761, Louisiana alone would receive $2.6 billion annually and a total of $50 billion over the first thirty years of the legislation's implementation.

In essence, H.R. 4761 would immediately cut in half the 200-mile area in the Atlantic and Pacific coasts and in the Eastern Gulf of Mexico which has been protected by long-standing Congressional moratoria and Presidential withdrawal from oil and gas leasing. H.R. 4761 would further abrogate Congress' powers by establishing a new, cumbersome state-centric decision-making process that by design would encourage leasing and development of federal OCS lands and resources within 100 miles of coastal state boundaries.

To entice and reward states which support offshore leasing, H.R. 4761 would establish a permanent revenue sharing entitlement program which would divert tens of billions of dollars of federal OCS revenues away from the Treasury. H.R. 4761 would further add to the federal budget deficit by creating and funding several direct spending programs which are not subject to Congressional appropriations or sunsets and by an array of costly industry-friendly special interest provisions including royalty-reductions, lease buy-backs, and bans on new or increased fees.

Vast Areas of the OCS are Currently Open to Leasing and Development

The proponents of H.R. 4761 seek to create the specter that, unless more areas of the OCS are immediately opened to oil and gas leasing, U.S. oil and gas production will plunge and dire economic consequences will result. Opening the OCS moratoria areas, they also assert, will reduce oil and gas prices.

In reality, the oil and gas industry has already been granted access to vast tracts of OCS lands and have explored or developed only a fraction of those assets. Under the Bush Administration -- one of most oil and gas friendly regimes in American history -- the Department of the Interior has offered leases on over 267 million acres of the OCS and the industry has acquired leases for about 24 million acres. In total, over 40 million acres of OCS lands are under industry lease and less than 7 million acres are in production. Moreover, according to the Mineral Management Service (MMS), the OCS lands currently available for leasing contain about 80 percent of developable OCS oil and gas reserves.

As any American who has filled their gas tank can attest, the OCS leasing and drilling and profit bonanza that the oil and gas industry has enjoyed during the Bush Administration has utterly failed to lower prices at the pump. Rewarding Big Oil with expanded access to protected OCS moratoria areas is unnecessary and has no demonstrable correlation to lower oil and gas prices.

The Illusion of Coastal Protection

The proponents of H.R. 4761 portray the legislation as a benign measure which empowers coastal states. They cite future Congressional action to repeal the OCS leasing moratoria as inevitable.

Ironically, on May 18, 2006 the House approved the Department of the Interior, Environment and Related Agencies Appropriations Act for FY 2007 which would extend the current moratoria in the Atlantic and Pacific coasts and the Eastern Gulf of Mexico. An amendment to strike the entire oil and gas moratoria was rejected by an overwhelming vote of 279 to 141. No Governor or Congressional delegation representing a state currently under the moratoria sought in that process to opt-out or remove protections. Moreover, the current Presidential withdrawal is in effect until the year 2012.

In reality, H.R. 4761 is a Trojan horse for coastal states which oppose OCS leasing on economic and environmental grounds. At the outset, H.R. 4761 shrinks the moratoria areas from 200 miles under current law to 100 miles from the state boundaries. Within 50 to 100 miles, H.R. 4761 would cease protections unless the state acts: Governors would have to get the concurrence of their state legislatures within one year to petition the Department of the Interior to prevent so-called "natural gas only" leasing and within three years to prevent oil leasing. In addition, states must re-petition every five years to maintain the protections. Within 50 miles, a state would have to affirmatively petition to allow for leasing, but would be granted between 50 and 75 percent of the revenues if they opt-in.

Notably, the oil and gas industry is granted a huge loophole in H.R. 4761 to cross protective OCS moratoria boundaries under Section 9 which states: "Further, any area of the OCS withdrawn from leasing may be leased and thereafter developed and produced by the lessee using extended reach or similar drilling from a location on a leased area located in an area available for leasing." In addition, under Section 11, the federal government pre-empts state authority over pipeline routing and no state may prohibit the construction of a natural gas pipeline through its own state waters.

By a combination of shrinking moratoria areas, procedural hurdles, curbs on state powers, and financial incentives, it is clear that the fundamental purpose of H.R. 4761 is to foster oil and gas development in OCS areas that it is not supported or allowed today. And even in the event that states attempt to protect their own coasts, they would be subject to the whims of bordering states which may choose to allow development under the new state seaward boundaries established by Section 4.

Coastal State Revenue Sharing and a Growing Federal Budget Deficit

The proponents of H.R. 4761 have asserted that OCS leasing in new areas will generate a windfall of revenue for coastal states and the federal Treasury. Under H.R. 4761, coastal states would receive 75 percent of OCS revenue within 12 miles seaward of the state/federal boundary and 50 percent of OCS revenue within 12 to 200 miles away.

Under Section 8(g) of the Outer Continental Shelf Lands Act, coastal states currently receive 27 percent of OCS revenues within 3 miles seaward of the state/federal boundary. Currently, six coastal states (Alabama, Alaska, California, Louisiana, Mississippi and Texas) receive roughly $100 million annually under the 8(g) program, with about $40 million of that amount accruing to Louisiana. In the OCS area beyond the 3 mile 8(g) zone, revenue generally goes to the Federal Treasury under current law. However, the Energy Policy Act of 2005 (P.L. 109-58) provided that $250 million of OCS revenues be paid annually to the six coastal oil and gas producing states (a total of $1 billion over four years).

In reality, the expanded coastal revenue sharing under H.R. 4761 is a new, permanent entitlement program which would divert Federal OCS revenues from existing offshore oil and gas leasing and production to adjacent states at enormous potential cost to the Treasury. Under H.R. 4761, individual states would receive revenues generated by the development – far beyond state boundaries – of public resources owned by all the American people. In fact, it is the federal revenue loss from the existing OCS areas open to leasing in the Gulf of Mexico that forms the basis for the sponsor's claim that Louisiana will gain $2.6 billion annually and $50 billion over the first thirty years under H.R. 4761.

On June 14, 2006, at the sole hearing committee hearing held on H.R. 4761, the Minerals Management Service testified that:

"...we have serious concerns about this bill because of its excessive short and long term costs....the bill as drafted, would divert significant OCS revenues from existing leases in Federal waters for broad uses by coastal states. The revenue sharing provisions of H.R. 4761 are inconsistent with the President's budget priorities and would have a significant, long-term impact on the budget deficit."

On June 21, 2006, the Director of the MMS wrote to Chairman Pombo to restate the Administration's opposition to revenue sharing provisions applicable to existing OCS leases and to state a preliminary estimate that H.R. 4761 would result in a decline of $69 billion in federal revenue over the first fifteen years.

New Direct Spending Programs/No Appropriations/No Sunsets

In addition to state revenue sharing, the proponents of H.R.4761 seek to expand support for offshore oil and gas drilling by creating new spending programs, for education and a variety of other purposes, funded by OCS revenues.

In reality, H.R. 4761 makes a mockery of fiscal responsibility. The new spending programs in Section 14 (Federal Energy Natural Resources Enhancement Fund Act of 2006), Section 23 (Mining and Petroleum Schools), and Section 26 (National Geo Fund Act) are not subject to Congressional appropriations or oversight. Moreover, they are permanent spending programs without a sunset date. Only Section 30 (Secure Rural Schools) has a dollar cap and time limit of $250 million and five years.

The ultimate cost of these open-ended new programs is unknown, since H.R. 4761 authorizes funding based on percentages of OCS, Mineral Leasing Act and other revenues. At a time of enormous budget deficits and with many worthy existing programs under-funded, it is highly questionable that it is a national priority to create, for example, a new education office within the Department of the Interior as would Section 23 (Energy and Mineral Schools Reinvestment Act). In addition, nothing in H.R. 4761 provides any guarantee that the Land and Water Conservation Fund Act of 1965 -- a highly effective and popular program which, subject to appropriation, funds federal land acquisition and state park and recreation activities using OCS receipts -- would be held harmless.

Royalty Relief: A Potential Solution Held Hostage

The proponents of H.R. 4761 attempt to respond to public outrage over oil and gas companies which received royalty-free leases under the 1995 Outer Continental Shelf Deep Water Royalty Relief Act by imposing fees on any such leases which are not renegotiated to include market price threshold cut-offs for royalty relief.

Mr. Markey offered an amendment which would have struck all the controversial OCS and spending provisions in H.R. 4761 and limited the legislation to the royalty-relief renegotiation incentive fees and a section imposing a modest rental fee on non-producing leases.

In reality, by rejecting Mr. Markey's amendment, the sponsors of H.R. 4761 are holding a potential solution to the royalty relief problem hostage. During consideration of the Interior appropriations bill on May 18, 2006, the House voted overwhelmingly, 252 to 165, to adopt the Hinchey-Markey-Rahall amendment that would have offered a stronger incentive (no new OCS leases) for oil and gas companies to renegotiate leases that do not suspend royalty relief when prices are high. According to GAO estimates, the federal Treasury stands to lose as much as $80 billion, depending on the outcome of industry-litigation, if the royalty relief problem is not addressed by Congress.

To make matters worse, H.R. 4761 also includes a royalty relief mandate which is applicable to all new OCS leasing. In Section 6, new OCS leases are subject to the "base royalty rate." In practical effect, for example, that means that the royalty rate for leases in shallow waters of the Gulf of Mexico would be lowered from 16 2/3 percent to 12 ½ percent for no apparent policy reason other than to further subsidize a highly profitable industry.

Industry Friendly Special Interest Provisions

H.R. 4761 is replete with provisions designed to benefit the oil and gas and other energy industries at the expense of the public and a few of the more egregious examples are cited below. A number of these provisions were debated and rejected by the conferees on the Energy Policy Act of 2005.

• **Section 3** would change the definition of "Affected State" as set forth in the Coastal Zone Management Act and the Outer Continental Shelf Lands Act, to "Adjacent State" and would significantly dilute the role of coastal states in considering proposed federal actions under the "consistency" provisions of the CZMA.

• **Section 10** would allow decommissioned oil and gas rigs to be used for offshore fish farms and other purposes, granting a full liability waiver to lessees abandoning such rigs.

• **Section 12** would exempt lease sales from the analysis and public process required under the National Environmental Protection Act (NEPA).

• **Section 17** would require the federal government to repurchase and cancel onshore and offshore leases (covering oil and gas, geothermal, coal, oil shale, tar sands, or other mineral leases) if the lease is not allowed to be explored and/or developed. A similar provision was debated and ultimately dropped from the Energy Policy Act of 2005.

• **Section 18** would override all other federal laws and require the Secretary of the Interior to accept "off-site" environmental mitigation from activities occurring under the Mineral Leasing Act, the Geothermal Steam Act, the Mineral Leasing Act for Acquired Lands, the Weeks Act, the General Mining Act of 1872, the Materials Act of 1947, or the Outer Continental Shelf Lands Act. Under this provision, in order to satisfy any mitigation requirements, a person could propose mitigation elsewhere and the Secretary would be required to accept the proposal if the measures "generally achieve the purposes for which mitigation measures were appertained."

• **Section 24** would prohibit the creation of new of any fees related to any federal *onshore and offshore mineral lease that was not in effect on January 1, 2005,* and sets cap on increase of existing fees concerning mineral leases. President Bush has called in the FY 2007 budget proposal for the repeal of a similar but more limited restriction that was included in the Energy Policy Act of 2005.

• **Section 29** would repeal the Energy Policy Act of 2005 provisions relating to royalty obligations on tar sands and oil shale leases and replace it with one which significantly reduces the royalty obligations of lessees.

Conclusion

The oil and gas supply disruptions from hurricanes Katrina and Rita in 2005 should inspire Congress to pursue more diverse and secure sources of energy for the nation. Instead, H.R. 4761 is based on the premise that the nation will remain, as President Bush has observed, "addicted to oil" and that leasing and development is the highest and best use of coastal resources. By terminating long-standing OCS moratoria, by establishing a permanent entitlement program using federal OCS revenue in an attempt to bribe coastal states to ignore the threat to their economies and environment and to reward those who already support existing leasing with huge windfalls, by creating new, open-ended spending programs not subject to appropriations or sunsets, and by a buffet of energy industry special interest riders, H.R. 4761 is costly and fundamentally misguided legislation that should not become law.

United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240

JUN 21 2006

The Honorable Richard W. Pombo
Chairman, Committee on Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

As you consider the Deep Ocean Energy Resources Act, I'd like to reiterate and expand upon several points I made in my testimony on the bill last week and the currently proposed amendment to that bill. As noted in my testimony, the Administration believes expanding access to offshore energy resources is important to the Nation's energy security. The Administration supports including a significant role for state views in the determination of future energy decisions in federal waters, and will not support drilling within at least 100 miles of the Florida coast.

While supporting expanded access to energy resources, among other concerns, the Administration opposes certain aspects of the revenue sharing provisions of H.R. 4761. Our preliminary and very rough estimates indicate that these provisions, if unchanged, would result in a decline of $69 billion of retained federal royalties over 15 years. This diversion would have significant impacts on the federal debt. The States' share would rise by $86 billion, for a total of $91 billion.

The Administration welcomes the opportunity for constructive discussions on revenue sharing options that would provide access to new oil and natural gas resources.

Sincerely,

Johnie Burton

R. M. "Johnnie" Burton
Director

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